

**For:** CO, KS, NM, OK, and TX State and County Offices

**Additional CRP Measures to Benefit Lesser Prairie Chicken  
in Colorado, Kansas, New Mexico, Oklahoma, and Texas**

**Approved by:** Deputy Administrator, Farm Programs



## **1 Overview**

### **A Background**

On March 27, 2014, FWS announced the final listing of the lesser prairie chicken as “threatened” under the Endangered Species Act (ESA). A “threatened” species is likely to become in danger of extinction within the foreseeable future, but the listing as “threatened” is more flexible than “endangered” in terms of how ESA protections are implemented. Concurrent with the listing decision, FWS announced a final special rule under ESA, section 4(d) to limit regulatory impacts on landowners and businesses associated with the listing.

On April 14, 2014, FWS provided FSA with a biological opinion containing their analysis of the expected adverse, benign, and beneficial effects likely to result from CRP implementation on the lesser prairie chicken and its habitats, including the effects of returning lands enrolled in CRP to crop production after CRP contract expiration. FWS concluded that CRP implementation is anticipated to result in a long-term positive population response, though certain program practices may result in short-term adverse effects to individual birds. FWS conclusions are consistent with the findings of a biological assessment previously prepared by FSA and submitted to FWS for review.

The complete text of the FWS biological opinion is located at <http://www.fws.gov/southwest/es/LPC.html>. Under “Documents”, CLICK “USFWS Biological Opinion for FSA (Conservation Reserve Program)”.

<b>Disposal Date</b>	<b>Distribution</b>
January 1, 2015	Above State Offices; State Offices relay to County Offices, NRCS Offices, and State Fish and Wildlife Agencies

## 1 Overview (Continued)

### B Purpose

This notice:

- informs FSA State and County Offices of those conservation measures and restrictions on certain permissive uses of CRP land that are in effect across portions of 85 counties located in southeastern Colorado, western Kansas, eastern New Mexico, western Oklahoma, and northwestern Texas (Exhibit 1), providing habitat and hosting remaining lesser prairie chicken populations
- directs COC's to work with local NRCS and State Fish and Wildlife Agencies to facilitate agricultural producer and landowner outreach and awareness about the new procedures and amending conservation plans, as appropriate and necessary.

## 2 Policy

### A Conservation Measures

The biological opinion goes into significant detail about CRP practices, technical practices, and appropriate conservation measures to be applied if the CRP land is located in proximity to known lesser prairie chicken populations. The conservation measures are designed to:

- avoid or minimize potential adverse effect to lesser prairie chicken and other federally listed species
- encourage establishment of large blocks of quality lesser prairie chicken habitat comprised primarily of diverse native species, adapted to local ecological site descriptions, providing appropriate food and cover and other habitat needs of the lesser prairie chicken throughout the year, including breeding, nesting, brood-rearing, winter cover, and protection against predators.

CRP maintenance and management activities shall continue to occur outside of primary nesting and brood-rearing seasons to avoid or minimize disturbance of breeding, nesting, and brood-rearing activities. Existing CRP conservation cover, whether composed of native or introduced species mixes, should be maintained or managed according to the conservation plan and consistent with CRP policy. While establishment of CRP conservation covers can occur at any time of the year, conversion of existing covers consisting of introduced species mixes to native species mixes associated with CRP re-enrollment shall be deferred until after primary nesting and brood-rearing seasons if nesting hens are present among the introduced cover scheduled for conversion.

## 2 Policy (Continued)

### B Permissive Uses

Permissive uses of CRP land shall avoid or minimize disturbance of lesser prairie chicken breeding, nesting, and brood-rearing activities during established primary nesting and brood-rearing seasons.

FWS remains concerned that emergency haying and emergency grazing of the same acres of CRP land in consecutive years can negatively impact important lesser prairie chicken habitat areas. These important lesser prairie chicken habitat areas are identified by the Crucial Habitat Assessment Tool (CHAT). CHAT identifies 4 categories of lesser prairie chicken habitat. CHAT Category 1 designations are important focal areas. CHAT Category 2 designations are connectivity zones between focal areas. CHAT Category 3 designations are potential expansion zones and other important habitat areas. CHAT Category 4 designations are other habitat areas within lesser prairie chicken eco-regions (Exhibit 2). Any combination of managed or routine grazing, managed harvesting, emergency haying, or emergency grazing of CRP land located within CHAT Categories 1-3 will be limited to once in a 3-year period, effective April 14, 2014.

**Example 1:** CRP field in Kansas within a CHAT Category 1 designation will be grazed under routine/managed grazing authority in 2014 and can be routine/managed grazed, managed harvested, emergency grazed (if authorized), or emergency hayed (if authorized) in 2017.

**Example 2:** CRP field in Oklahoma within a CHAT Category 2 designation was emergency grazed in 2013 and would be eligible for routine/managed grazing, managed harvesting, emergency haying (if authorized), and emergency grazing (if authorized) in 2016.

**Example 3:** CRP field in Texas within a CHAT Category 4 designation was emergency grazed in 2013 and would be eligible for emergency haying (if authorized) and emergency grazing (if authorized) in 2014.

**Note:** Shape files and other CHAT information will be shared with FSA State and County Offices to facilitate landowner and agricultural producer outreach.

Lesser prairie chicken also tend to avoid areas with vertical structures; therefore, new wind turbines will **not** be constructed on CRP lands located within areas classified under CHAT Categories 1-3 within 1.25 miles of known leks (lesser prairie chicken communal grounds).

## 2 Policy (Continued)

### C Regulatory Predictability

CRP participants following their conservation plan, which includes conservation measures and restrictions on certain permissive uses of CRP land as appropriate if the CRP land is located in close proximity (within CHAT Category 1-3 designations) to lesser prairie chicken populations, will receive regulatory predictability with respect to ESA considerations.

ESA, Section 9 and Federal regulation according to ESA, section 4(d) prohibit the take of endangered and threatened species, respectively, without special exemption. The biological opinion provided by FWS identifies CRP as a comprehensive conservation program with special exemption. Under ESA, section 7, a taking that is incidental to and not intended as part of the agency action, in this case CRP implementation, is **not** considered to be a prohibited taking. In the context of the biological opinion, such a taking would be incidental to the application of the conservation measures described in their conservation plans designed to benefit lesser prairie chicken populations in general.

This regulatory predictability will extend through the period of the CRP contract and after CRP contract expiration for up to 30 years provided the landowner continues to follow the conservation plan or a new conservation plan if he or she wishes to:

- maintain the conservation cover
- maintain the conservation cover and engage in a grazing or ranching system that considers lesser prairie chicken habitat as well as livestock forage needs.

Regulatory predictability coverage ends when the former CRP land is returned to crop production or otherwise ceases to provide lesser prairie chicken habitat benefit.

### D Definitions

Take is defined as to harass, harm, pursue, hunt, shoot, wound, kill, capture, or collect, or to attempt to engage in any such conduct.

Harm includes significant habitat modification or degradation that results in death or injury to listed species by significantly impairing essential behavioral patterns, including breeding, feeding, or sheltering.

Harass is an intentional or negligent act or omission that creates the likelihood of injury to listed species by annoying it to such an extent as to significantly disrupt normal behavior.

**3 Action**

**A State Office Action**

State Offices shall:

- forward copies of this notice to the following:
  - all local FWS offices
  - the NRCS State Office
  - State Fish and Wildlife Agency office
- work with FSA STC's and State Technical Committees to develop State amendments to 2-CRP, as necessary
- ensure that affected County Offices follow the provisions of this notice.

**B County Office Action**

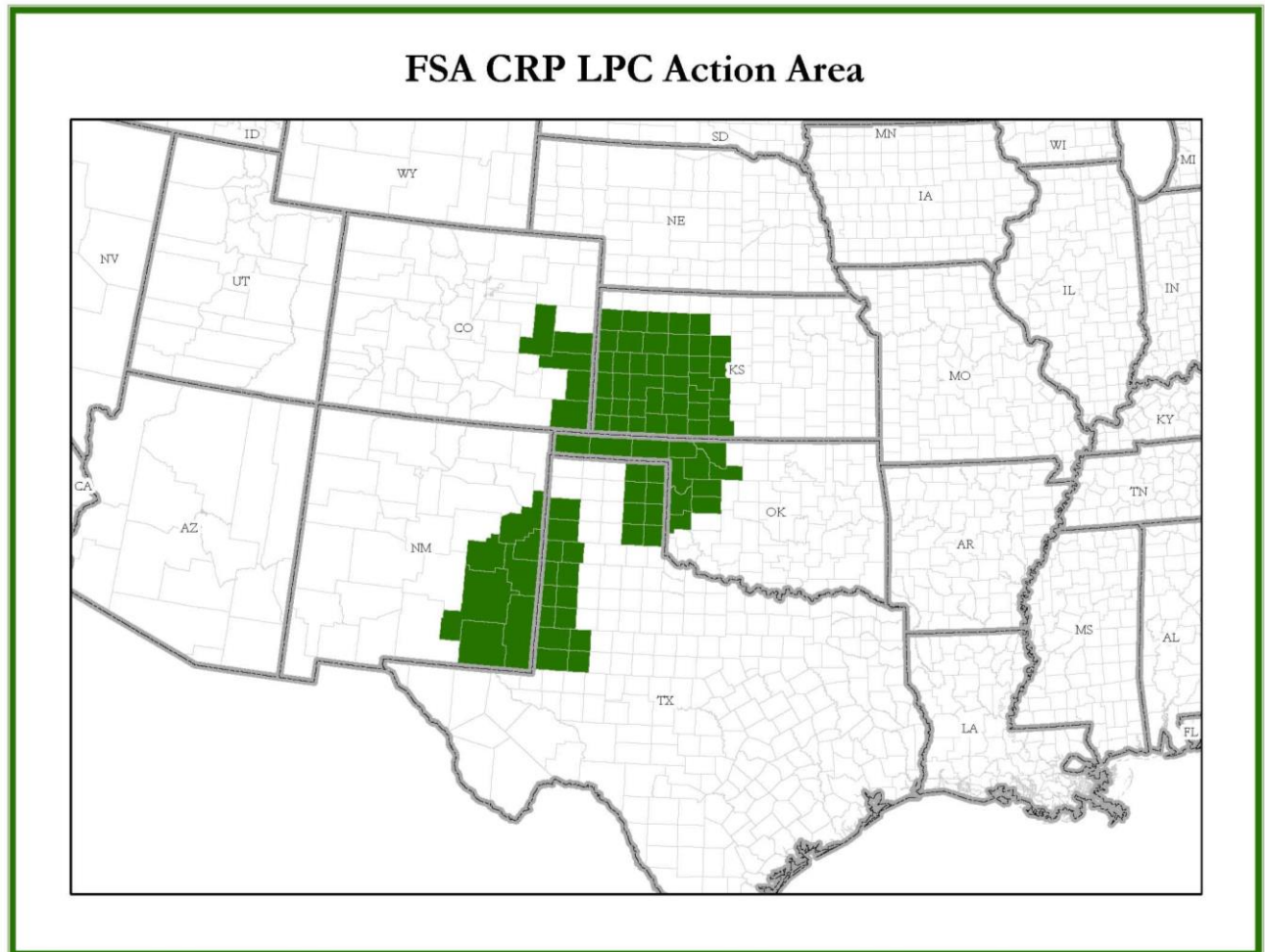
County Offices shall follow the provisions of this notice.

**C Contact Information**

Direct questions about this notice to David A. Hoge, CEPD, at either of the following:

- e-mail at **david.hoge@wdc.usda.gov**
- telephone at 202-720-7674.

Counties Within FSA CRP Lesser Prairie Chicken Action Area





Lesser Prairie Chicken Focal Areas and Connectivity Zones

